89-1367

No.

Supreme Court, U.S.
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In The
Supreme Court of The United States
October Term, 1989

In Re:

LILLIAN CAPODAGLI, Administratrix of the Estate of David P. Capodagli, Deceased,

Petitioner,

v.

ROBERT D. WILSON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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51 p

QUESTION PRESENTED

WHETHER A MUNICIPAL POLICE CHIEF'S FAILURE TO PROVIDE NEEDED MEDICAL ATTENTION, INCLUDING RECOGNITION OF SUICIDE POTENTIAL AND TIMELY MEDICAL INTERVENTION, FOR A PRETRIAL DETAINEE WHO HUNG HIMSELF IN A JAIL CELL DENIED THE DETAINEE HIS RIGHT TO MEDICAL ATTENTION GUARANTEED BY THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION. IN PARTICULAR:

I.

WHETHER THIS CASE IMPLICATES THE DUE PROCESS OBLIGATION OF THE POLICE TO PRETRIAL DETAINEES OR OTHER PERSONS IN THEIR CARE WHO REQUIRE MEDICAL ATTENTION, TO OBTAIN SUCH MEDICAL ATTENTION, A QUESTION RESERVED IN CITY OF REVERE V. MASSACHUSETTS GENERAL HOSPITAL, 463 U.S. 239, 244, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983).

II.

WHETHER THE DECISION BELOW IS IN CONFLICT WITH DECISIONS OF THIS COURT, AND OF FEDERAL DISTRICT AND CIRCUIT COURTS, WHICH HAVE UPHELD THE DUE PROCESS RIGHTS OF INMATES AND PRETRIAL DETAINEES WHO ARE POTENTIALLY SUICIDAL, TO BE PROTECTED FROM THEMSELVES AND TO BE PROVIDED REQUISITE MEDICAL ATTENTION.

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

In re:

LILLIAN CAPODAGLI, Administratrix of the Estate of David P. Capodagli, Deceased,

Petitioner,

v.

ROBERT D. WILSON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PRAYER

The petitioner, Lillian R. Capodagli, Administratrix of the Estate of David P. Capodagli, Deceased, respectfully prays that a Writ of Certiorari issue to review the judgment and order entered by the

Illinois Appellate Court on March 10, 1989, and the order of the Illinois Supreme Court denying leave to appeal, entered June 1, 1989, Docket No. 68445.

OPINION BELOW

The opinion of the Illinois Appellate Court in Capodagli v. Wilson, 180 Ill.App.3d 456, 536 N.E.2d 135 (1989) is attached hereto and appears as Appendix A. The Illinois Supreme Court denied a timely filed petition for leave to appeal on June 1, 1989, Docket No. 68445, which is also attached hereto and appears as Appendix B.

STATEMENT OF JURISDICTION

The jurisdiction of this Honorable Court is invoked under 28 U.S.C. §1257(3) and this Petition for Writ of Certiorari has been filed within the time permitted by law, under 28 U.S.C. §2101(c), within ninety days of the decision of the Illinois Supreme Court on June 1, 1989, denying leave to appeal from the decision

of the Appellate Court, and rendering the Appellate Court decision final as of June 1, 1989.

CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV, §1 of the United States Constitution provides:

> §1. Citizenship rights not to be abridged by states.
>
> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person or life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISION INVOLVED

Title 42, §1983, United States Code, states:

> §1983. Civil action for deprivation of civil rights.
>
> Every person, who under color of any statute, ordinance, regulation, custom or usage,

> of any State or Territory or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

On July 5, 1980, David Capodagli, 19 years old, then intoxicated and under the influence of drugs, was taken into custody by Markham Police and placed, alone, in an individual cell at 12:30 a.m. for approximately one hour without observation; he was then found hanging from the bars of the cell by his T-shirt (T 670, T146-150, 152).

Plaintiff then brought this action based on 42 U.S.C. §1983 and the due

process clause of the 14th Amendment of the United States Constitution, alleging that the official policies of Defendant, Robert D. Wilson, Chief of Police of the City of Markham, caused David's death and denied him his right to life without due process of law under the 14th Amendment of the United States Constitution. (Petition for Leave to Appeal, Page 9.) Defendant admitted and the jury was instructed that Chief Wilson was solely responsible for formulating the official policy of the City of Markham pertaining to the booking and detention of prisoners (C 461). Plaintiff presented circumstantial and expert testimony that David was denied his 14th Amendment right to life guaranteed by the due process clause by policies which Chief Wilson, in his official capacity had in force, which denied David needed medical attention, by permitting prisoners known to be intoxicated to be placed in a

jail cell without first undergoing a medical examination, permitting intoxicated prisoners to be detained in an individual jail cell without being visually observed at periodic intervals, and an overall deficient procedure for booking and detaining prisoners.

The jury found for Plaintiff and assessed damages of $375,000 (C 485-486). The Trial Court entered judgment for Defendant, stating the verdict was against the manifest weight of the evidence (C 601). Plaintiff appealed to the Illinois Appellate Court, which found Defendant's failure to have David medically examined despite his obvious intoxication and the officers' violation of procedures to check the cells every half hour did not constitute a deliberate disregard for his well-being and that Defendant's knowledge that David was behaving violently was no reason to know or suspect that his

violence might become self-directed. Capodagli v. Wilson, 180 Ill.App.3d 456, 536 N.E.2d 135 (1989).

Petitioner sought leave to appeal to the Illinois Supreme Court, contending (1) the Appellate Court's complete failure to address a claim properly presented as Point I of Plaintiff's Brief concerning the Trial Court's failure to employ the correct legal standard denied Petitioner her right to due process and equal protection, which guarantees her constitutional right to appeal, and (2) the Appellate Court incorrectly decided the substantive issue, without apparently considering the substantial contrary authority. (Petition for Leave to Appeal, Pages 3-6). The Illinois Supreme Court denied leave to appeal on June 1, 1989.

REASONS FOR GRANTING THE WRIT

I. THIS CASE IMPLICATES THE DUE PROCESS OBLIGATION OF THE POLICE TO PRETRIAL DETAINEES OR OTHER PERSONS IN THEIR CARE WHO REQUIRE MEDICAL ATTENTION, TO OBTAIN SUCH MEDICAL ATTENTION, A QUESTION RESERVED IN CITY OF REVERE V. MASSACHUSETTS GENERAL HOSPITAL, 463 U.S. 239, 244, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983).

City of Revere v. Massachusetts General Hospital, 463 U.S. 239, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983), involved the possible application of the 8th Amendment and the 14th Amendment to municipal responsibility for prisoners in need of medical attention. This Court again affirmed the statement in Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976), that the 8th Amendment's prescription against cruel and unusual punishment is violated by "deliberate indifference to serious medical needs of prisoners." (463 U.S. 239, 243-244.) Because the state does not acquire the power to punish (with which

the 8th Amendment is concerned) until after a formal adjudication of guilt and there had been no formal adjudication of guilt against the Petitioner in Revere at the time he required medical care, the 8th Amendment did not apply, but, the Court said, the due Process Clause does require a governmental agency to provide medical care to persons injured while being apprehended by police; in fact, the Court said that the due process rights of a pretrial detainee are at least as great as those provided by the 8th Amendment to a convicted prisoner, then said:

> We need not define, in this case, Revere's due process obligation to pretrial detainees or to other persons in its care who require medical attention. (463 U.S. 239, 244.)

In this case, the jury heard evidence that David required medical care, that he did not receive medical attention, and that this failure was a proximate cause of

his death by suicide. Unfortunately, the opinion below is nearly totally devoid of any of the medical evidence. Consequently petitioner shall summarize such evidence.

At approximately 12:45 a.m., Markham police placed David in a jail cell knowing he was intoxicated. David was found hanging from a cell bar approximately four feet from the floor at 1:44 a.m. David was not observed during this time. Defendant admitted he was acting under color of state and municipal law, that he was the official policy maker of the City of Markham pertaining to booking and detention of prisoners.

Medical evidence, at autopsy, indicated David was intoxicated and that methaqualone was found in his blood. The medical examiner explained that alcohol and methaqualone can both act as sedatives so an individual could become combative or experience mood swings. The toxicologist

explained, too, that ingesting alcohol and methaqualone would produce a sedative effect and mood swings would be very common. (Transcript, 273-274, 281-282, T 125). There was no evidence presented of any training of the municipal officials responsible for the custody of prisoners receiving any training regarding suicide detection or prevention (Transcript, 348, 369.)

Petitioner presented evidence that David who was using alcohol and drugs was suicidal while he was in municipal custody, that he needed medical attention of some type, but this was not recognized and, consequently, David did not receive the required medical attention.

Whether the police could or should have recognized or in fact did recognize that David was suicidal and should have provided medical attention was an issue that was illuminated in this case by

expert testimony. Joseph R. Rowan, Executive Director and Chairman of the Board of Juvenile and Criminal Justice International, a private, non-profit survey consultation agency, and holder of a masters degree in correctional administration from the University of Notre Dame, defined correctional administration as the study of how detention and correctional institutions should be operated and what are the good standards and practices (T 185-186). (The opinion below does not even mention his testimony.)

Among other professionally related activities, he was selected to be on the Suicide Task Force for the United States Department of Justice, to develop a national program, training and guidelines, and standards for the handling of potentially suicidal persons in jails and lockups (T 188-189). Among 223 monographs

he had written was one entitled, "Almost All Suicides In Jails and Lockups Can Be Prevented If ..." (T 191). He had a series of jobs in the field of corrections including working at a local jail in Minnesota in 1941, being Deputy Commissioner of Corrections for the State of Minnesota and Director of the John Howard Association in Chicago (T 193-196). He has been in the field for a total of 45 years (T 210).

Mr. Rowan, who had been provided with depositions and other information, testified that in his opinion, Chief Wilson's 1975 directive for the officers to check on the arrestees in the lockup every thirty minutes existed, but the police officers did not know about it; so, it was grossly deficient from the standpoint of implementation and practice (T 215-216). A 1979 memorandum concerning the black binder where departmental

memorandums and directives would be collected, set up a process that was not working because officers did not know about the 1975 directive which was supposed to be in the black binder (T 217-218). There was no policy on medical screening prior to placing persons who, at the time of arrest, were inebriated or using drugs, into the lockup, contrary to the American Medical Association, American Correctional Association and National Sheriffs' Association standards (T 218).

The National Sheriffs' Association Jail Officers Training Manual, Rowan explained, says that jail booking officers should conduct a basic medical screening of all inmates and consult a physician if the inmate shows signs of a medical disorder or serious alcoholism (T 220). The receiving screening standard of the American Association provides (T 220):

> Current illness and health problems, including dental

problems, venereal diseases, and other infections, medications taken, and special health requirement, use of alcohol and other drugs which include types of drugs used, mode of use, amounts of use, frequency used, date or time of last use, and the history of problems which may have occurred after ceasing. In other words, convulsions or going into delirium.

Mr. Rowan went on to discuss the American Medical Association standard for health services in jail receiving and screening which provides (T 220-221):

> Written policy and defined procedures require receiving screening to be performed by health trained or qualified health care personnel on all inmates including transfers upon arrival at the facility with the findings recorded on a printed screening form approved by the health authority.
>
> Inquiry into current illness and health problems including venereal diseases, medications taken, and special health requirements, use of alcohol and other drugs which includes types of drugs used, mode of use, amounts used, frequency used, date or time of last use, and a history of problems which may have occurred after

ceasing use. For example, convulsions . . .

These standards, Rowan concluded, support constant supervision for persons who are placed in a lockup under these conditions; thus, the National Sheriffs' Association says: "All inmates who are intoxicated when admitted must be observed constantly" (T 223). But in Markham there was no policy requiring constant supervision - no policy at all; the officers did not even know about the 1975 policy (T 224). The 1977 Illinois standards requiring a 30 minute check were applicable here (T 224). Mr. Rowan emphasized that the 1977 Illinois Municipal Jail and Lockup Standards (T 225) provide:

> For the protection of city officials, suspected inebriates should be examined by a physician before confinement to determine intoxication or illness. An undetected skull fracture, diabetic coma, epilepsy, or some other disease or illness

often produce behavior resembling drunkenness.

The standard issued by the Commission on Accreditation for Law Enforcement Agencies provides (T 226):

> A written directive prescribed methods for handling and detaining persons under the influence of alcohol or narcotics who are violent or self-destructive. Commentary: "The holding facility (-- and that is police lockup generally --)* is not normally equipped to handle appropriate treatment to intoxicated or drug addicted arrestees, and such persons would be detained in other facilities when available. When these facilities are not available, special consideration should be given to ensure that the potential for arrestees to injure themselves or others is minimized. Arrestees should be under observation at all times. (* These words in parentheses are those of the witness who was reading the standard to the jury.)

No such policy existed in Markham (T 227). There was no policy spelling out what particular persons should be providing the supervision (T 228). Rowan

told the jury that the AMA standard provides (T 232-233):

> Written policy and defined procedures exist regarding the provision of adequate number of health trained correctional officers as follows: Inmates are within sight/sound of at least one health trained correctional officer at all times and minimally one health trained officer per shift is trained in basic cardiopulmonary resuscitation, C.P.R., and recognition to symptoms of illness most common to the inmates.

Rowan further testified that American Correctional Association standard 2-5271 provides:

> A training program is established for the responsible health authority in cooperation with the facility administrator and provides instruction in the following areas: Administration of first aid and cardiopulmonary resuscitation if emergency treatment is not provided within four minutes, in certain situations lives can be lost.

Similar standards have been said to incorporate the principles set forth in Estelle v. Gamble. (Matzker v. Herr, 748 F.2d 1142 (7th Cir. 1984.) Mr. Rowan concluded that there was no policy and procedure in existence in Markham pertaining to suicide detection and prevention, and he outlined what such a policy would have provided (T 233-234). In addition, there was no audio or visual monitoring, which should supplement not replace human supervision (T 235). Constant supervision, he testified, shouldn't be a goal, it should exist (T 239), and it was realistic, from an economic standpoint to have constant supervision in a lockup the size of Markham in 1980 (T 240). When he was asked if his opinion about Defendant's policies would be the same if this were a single incident of hanging, he responded: "No, those policies should exist if

nothing like this ever happened" (T 253). In 1980, suicide prevention and detection training was available (T 254).

In City of Canton, Ohio v. Harris, _____ U.S. _____, _____ L.Ed.2d _____, 109 S.Ct. 1197, 1204 (1989), under somewhat similar factual circumstances, the Court held that the inadequacy of police training may serve as the basis for §1983 liability where, and only where, the failure to train amounts to deliberate indifference to the rights of persons with whom the police must come in contact. The Court there again observed that it has never determined what degree of culpability must be shown before the particular constitutional deprivation of a denial of the due process right to medical care while in detention, is established, and that the Court, in Revere, had reserved decision on the question of whether something less than the 8th

Amendment's deliberate indifference test may be applicable in claims by detainees asserting violations of their due process rights to medical care while in custody. (109 S.Ct. 1197, 1204, n. 8).

Unlike the situation in Canton, in which the court was required to assume that the inmate's constitutional right to receive medical care was denied by city employees, the Appellate Court here found the failure to have David medically examined despite his obvious intoxication did not constitute a deliberate disregard for David's well-being. That reasoning directly implicates the nature and scope of David's due process right to medical care while a pretrial detainee in the custody of the Markham police. This is consequently an appropriate case to determine the issue reserved in Revere, the scope of the due process obligation to

obtain medical care for pretrial detainees in its care.

II. THE DECISION BELOW IS IN CONFLICT WITH DECISIONS OF THIS COURT, AND OF FEDERAL DISTRICT AND CIRCUIT COURTS, WHICH HAVE UPHELD THE DUE PROCESS RIGHTS OF INMATES AND PRETRIAL DETAINEES WHO ARE POTENTIALLY SUICIDAL, TO BE PROTECTED FROM THEMSELVES AND TO BE PROVIDED REQUISITE MEDICAL ATTENTION.

In Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251, this Court held that prison authorities have a duty under the 8th Amendment to provide needed medical care for inmates and that deliberate indifference to serious medical needs of prisoners violates the Constitution. The Illinois Appellate Court here relied on two decisions of the Federal courts, State Bank of St. Charles v. Camic, 712 F.2d 1140, (7th Cir. 1983) and Williams v. City of Lancaster, 639 F.Supp. 377, (E.D. Pa. 1986). The Williams court found failure to order a medical exam was not deliberate

indifference and that there was no duty to install an elaborate suicide prevention system. St. Charles and Williams did at least implicitly recognize a §1983 cause of action for suicide of a pretrial detainee. The decisions were based on the facts which the court found showed only negligence.

With respect to the medical needs of individuals, this Court has squarely held that pretrial detainees, not as yet convicted of any crime, such as David in this case, are entitled to greater protection than convicted persons under the 8th Amendment. (Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979).) In City of Canton, Ohio v. Harris, this Court upheld the imposition of §1983 liability upon a municipality due to the inadequacy of police training where it amounts to deliberate indifference to the constitutional rights of persons with

whom the police come in contact. In that case, Canton police had failed to obtain medical help for a prisoner who was subsequently diagnosed as suffering from a severe emotional ailment, albeit one different from that involved in this case. The female inmate in that case claimed that she needed medical help and that the police officers were not provided with any special training to make a determination as to when to summon medical care for an injured detainee.

Paralleling some of the evidence introduced in this case is Partridge v. Two Unknown Police Officers, 751 F.2d 1448, 1452, (5th Cir. 1985), where plaintiff alleged suicide is a known risk at detention centers, defendants knew or should have known that Partridge was suicidal and defendants' policies and procedures inadequately protected detainees from the risk of suicide. In

rejecting the argument that the duty of which this Court spoke in Estelle v. Gamble did not extend to instances of deliberate self-injury, the Court stated:

> There is no sound underlying distinction between the right to medical care for physical ills and for psychological or psychiatric afflictions. . . . Treatment of mentally disturbed inmates is a "serious medical need" under Estelle. . . . The "deliberate indifference" standard of Estelle is therefore equally applicable to assessing the constitutional adequacy of treating psychological or psychiatric ailments at a prison.
>
> Suicidal tendencies evidence a psychological or psychiatric condition that could be as serious as or more serious than any physical pathology or injury. And just as a failure to act to save a prisoner suffering from gangrene might constitute deliberate indifference, . . . failure to take any steps to save a suicidal prisoner from injuring himself may also constitute deliberate indifference to a serious medical need.

Other cases indicating that suicides who are denied proper medical attention may be entitled to recover under §1983 include the following: Strandell v. Jackson County, Illinois, 634 F.Supp. 824 (So. Dist. Ill. 1986); Guglielmoni v. Alexander, 583 F.Supp. 821, 827 (D. Conn. 1984); Jackson v. City of Chicago, 645 F.Supp. 926 (N.D. Ill. 1986); Mader v. City of Chicago, 85 C 7914, unpublished opinion of Magistrate Bucklo, to the same effect; Miga v. City of Holyoke, 398 Mass. 343, 497 N.E.2d 1 (1986); Jones v. County of DuPage, 87 C 9841, memorandum opinion of the United States District Court for the Northern District of Illinois, Eastern Division, filed December 12, 1988, rejecting a motion to dismiss where Plaintiff's decedent was placed in a cell, unattended, obviously intoxicated, not examined by any medical authority or observed periodically and who eventually

harmed himself; Matje v. Leis, 571 F.Supp. 918, 930 (S.D. Oh. 1983); Madden v. City of Meriden, 602 F.Supp. 1160, 1164 (D. Conn. 1985); Holland v. Breen, 523 F.Supp. 284, 288-290 (D. Mass. 1985).

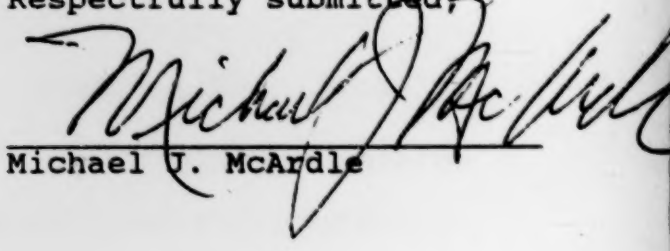
It is submitted that the overwhelming authority holds that the due process obligations of the authorities to those in their custody does extend to the medical needs of those who are potentially suicidal and that failure to act to train the responsible agents to recognize potential suicide as a legitimate and serious medical need and provide medical assistance may constitute deliberate indifference and a violation of §1983. At any rate, there is a division of authority on this issue between the Illinois Appellate Court in this case and the Federal courts, which is ripe for resolution by this Court. We suggest that the instant case is an excellent vehicle

for examination and, if necessary, clarification of the law in this area.

CONCLUSION

For the reasons states, the Petitioner respectfully prays that this Honorable Court issue a Writ of Certiorari to review the judgment of the Illinois Appellate Court.

Respectfully submitted,



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APPENDICES

APPENDIX A

FIFTH DIVISION
MARCH 10, 1989

86-2491

LILLIAN R. CAPODAGLI, Administratrix of the Estate of David P. Capodagli,

Plaintiff-Appellant,

v.

ROBERT D. WILSON, Chief of Police of the City of Markham,

Defendant-Appellee.

Appeal from the Circuit Court of Cook County

Honorable Charles J. Durham,
Judge Presiding.

JUSTICE PINCHAM delivered the opinion of the court:

The plaintiff, Lillian R. Capodagli, Administratrix of the Estate of David Capodagli, appeals from the trial court's judgment, notwithstanding the verdict in favor of defendant, Robert D. Wilson's (sic) Chief of Police of the City of Markham. We affirm. Our reasons follow.

On July 5, 1980, 19 year old David Capodagli (David), while under the influence of alcohol and methaqualone, was arrested by City of Markham Police for outstanding warrants. He was placed, alone, in a city of Markham jail cell. One hour later, David was found hanging in the cell by his tank top t-shirt. He had committed suicide.

Plaintiff filed the instant complaint under the 1983 Civil Rights Act (42 U.S.C. par. 1983) as the Administratrix of the Estate of David Capodagli. In the complaint, plaintiff alleged that David was denied his right under the Fourteenth Amendment to the Constitution of the United States not to be deprived of his life without due process of law. Plaintiff's complaint alleged that the policies of the defendant, in his official capacity as the City of Markham Police Chief, which permitted (1) prisoners known

to be intoxicated to be placed in a jail cell without first undergoing a medical examination to ascertain their well being, (2) intoxicated prisoners to be detained in a jail cell without being visually observed at periodic intervals, were inherently deficient procedures for detaining prisoners.

Following trial, the jury returned a verdict in favor of plaintiff and awarded plaintiff $375,000 in damages. However, the trial court entered a judgment notwithstanding the jury's verdict in favor of defendant.

On this appeal, plaintiff maintains that she is entitled to a reversal of the judgment in favor of defendant and that she is entitled to a re-entry of the judgment because the trial court did not apply the correct legal standards governing entry of a judgment notwithstanding the verdict. Conversely,

the defendant maintains that the trial court used the correct standards for entry of a judgment notwithstanding the verdict, as set forth in section 2-1202 of the Illinois Code of Civil Procedure. (Ill.Rev.Stat. 1987, ch. 110, par. 2-1202.) It is there provided that:

"***Relief after trial may include the entry of judgment if under the evidence in the case it would have been the duty of the Court to direct a verdict without submitting the case to the jury."

The standard governing review of a trial court's decision to enter judgment notwithstanding the verdict is announced in Pedrick v. Peoria & Eastern R.R. Co. (1967), 37 Ill.2d 494. In Pedrick the court stated that judgment notwithstanding the verdict may be entered "only in those cases in which all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant

that no contrary verdict based on that evidence could ever stand." (37 Ill.2d 494, 510.) Such is the instant case. The issue at trial in the case at bar was whether David was denied his Fourteenth Amendment constitutional right not to be deprived of his life without due process by policies which the defendant, in his official capacity, enacted and had in force.

Local governing bodies and local officials in their official capacity may be sued under 42 U.S.C. section 1983 for monetary damage, declaratory judgment, and injunctive relief where the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by those whose edicts or acts may fairly be said to represent official policy. Monell v. New York City

Dept. of Social Services (1978), 436 U.S. 658, 56 L.Ed.2d 611, 98 S.Ct. 2018.

Section 1983 (42 U.S.C. par. 1983) provides that every "person" who, under color of any statute, ordinance, regulation, custom, or usage of any State subjects, or "causes to be subjected," any person to the deprivation of any federally protected rights, privileges, or immunities shall be civilly liable to the injured party. In an action brought under section 1983, "the initial inquiry must focus on whether the two essential elements to a section 1983 action are present: (1) whether the conduct complained of was committed by a person acting under color of state law; and (2) whether this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States." Williams v. City of Lancaster, P.A. (1986), 639 F.Supp. 377, 380; State

Bank of St. Charles v. Camic (1983) 712 F.2d 1140; Parratt v. Taylor (1981), 451 U.S. 527, 535, 68 L.Ed.2d 420, 101 S.Ct. 1908, 1913.

In the instant case there is no question that the defendant acted under color of state law. The trial court found, however, that plaintiff failed to demonstrate that any policy instituted by defendant violated David's Fourteenth Amendment right not to be deprived of his life without due process. We agree.

In State Bank of St. Charles v. Camic (1983), 712 F.2d 1140, plaintiff sued on behalf of the estate of a jailed prisoner, who committed suicide while imprisoned in the city jail. The prisoner was intoxicated and violently resisted arrest and booking, which prompted one officer to note that the prisoner was acting in a "freaky" manner. About an hour later, the prisoner was found fatally hanged by his

shirt in his cell. The Police Department Regulations required hourly cell checks. The district court granted defendant's motion for summary judgment on the grounds that failing to prevent detainee's suicide did not constitute a constitutional deprivation. Plaintiff appealed. On appeal, the court held that defendants were entitled to summary judgment under section 1983 where it was undisputed that defendants had no knowledge of or any reason to suspect that the prisoner had suicidal tendencies. The court further reasoned that "Knowing that [defendant] was behaving violently or was acting in a 'freaky' manner is not synonymous with having reason to know that the violence might become self-directed." The court further held that, "Even had the defendants disregarded one or more of their established procedures, such as checking the cells every hour or

effectively monitoring by visual or auditory systems the activities of prisoners incarcerated *** the actions of the defendants do not constitute deliberate disregard for the possibility that [detainee] would take his own life."

In Williams v. City of Lancaster, P.A. (1986), 639 F.Supp. 377, the plaintiff brought, against the defendant, a civil right and wrongful death action in which plaintiff sought to recover damages for the death of a prisoner who, while intoxicated, hung himself in his cell while incarcerated in the city jail. State regulations required a cell check every half hour. The check was routinely skipped between 5 and 6 a.m., when the on-duty officer left the station to feed the police horses. In granting defendant's motion for summary judgment the district court held that Williams failed to demonstrate any infringement of

constitutional rights sufficient to state a claim under the civil rights statute. The court reasoned that the officer's failure to follow the 30 minute cell check requirement was negligence at best and did not demonstrate a "total indifference to [detainee's] safety." The court further reasoned that even if it was police department custom to regularly miss the 5:30 check, "plaintiff has failed to show how that hour-long gap is anything more than mere negligence. A brief departure from the jail regulations does not automatically impinge upon prisoners' constitutional rights."

Applying Pedrick to the case at bar, the evidence when viewed most favorable to plaintiff, overwhelmingly favored the defendant and the trial court was correct in entering judgment notwithstanding the verdict. There was no evidence that the defendant had any knowledge of or any

reason to suspect suicidal tendencies by David. Although the evidence at trial established that David was violent, intoxicated, and disorderly, defendant's knowledge that he was behaving violently was no reason to know or suspect that his violence might become self-directed. State Bank of St. Charles v. Camic (1983), 712 F.2d 1140.

The officers' failure to have David medically examined, despite his obvious intoxication, and the officers violation of the established procedures to check the cells every half hour, did not constitute a deliberate disregard for David's well-being or safety. Williams v. City of Lancaster, P.A. (1986), 639 F.Supp. 377.

Plaintiff, additionally argues that defendant should have installed a valid surveillance system for observation in the jail cells to prevent a suicide attempt. We disagree. The City of Markham police

department was under no such duty. Williams v. City of Lancaster, P.A. (1986), 639 F.Supp. 377.

We affirm the trial court's judgment notwithstanding the verdict.

AFFIRMED.

MURRAY, P.J., and COCCIA, J., CONCUR.

APPENDIX B

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
Supreme Court Building
Springfield, IL 62706
(217) 782-2035

June 1, 1989

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No. 68445 - Lillian R. Capodagli, Admrx., etc., petitioner, v. Robert D. Wilson, etc., respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 23, 1989.